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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

STANLEY KUZMICKI,

Plaintiffs,

v.

SAMANTHA HANRAHAN, et al.,

Defendants.

Case No. 3:17-CV-0342-RCJ-CBC

REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE

This Report and Recommendation is made to the Honorable Robert C. Jones, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR IB 1-4. Before the court is plaintiff's failure to file a second amended complaint pursuant to the court's order (ECF No. 16).

This action is a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983. On July 25, 2018, the court issued an order dismissing the first amended complaint with leave to amend and directed plaintiff to file a second amended complaint by August 30, 2018 (ECF No. 16). Thereafter, plaintiff was granted one final opportunity to file a second amended complaint by November 21, 2018 (ECF No. 20). On November 9, 2018, plaintiff filed a notice advising the court that he would not file a second amended complaint (ECF No. 21).

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure

1 to prosecute an action, failure to obey a court order, or failure to comply with local rules.
 2 See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance
 3 with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal
 4 for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856
 5 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal for failure to comply with local rule requiring
 6 *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833
 7 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson*
 8 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and
 9 failure to comply with local rules).

10 In determining whether to dismiss an action for lack of prosecution failure to obey
 11 a court order, or failure to comply with local rules, the court must consider several factors:
 12 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
 13 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
 14 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
 15 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
 16 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

17 In the instant case, the Court finds that the first two factors, the public's interest in
 18 expeditiously resolving this litigation and the Court's interest in managing the docket,
 19 weigh in favor of dismissal. The third factor, risk of prejudice to Defendants, also weighs
 20 in favor of dismissal, since a presumption of injury arises from the occurrence of
 21 unreasonable delay in filing a pleading ordered by the court or prosecuting an action. See
 22 *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor – public policy
 23 favoring disposition of cases on their merits – is greatly outweighed by the factors in favor
 24 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey
 25 the court's order will result in dismissal satisfies the "consideration of alternatives"
 26 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779
 27 F.2d at 1424. The court's order extending time for plaintiff to file a second amended
 28 complaint expressly stated: "If plaintiff fails to timely file an amended complaint, this case

1 will automatically be dismissed." (ECF No. 20). Thus, plaintiff had adequate warning that
2 dismissal would result from his noncompliance with the court's order to file an amended
3 complaint.

4 It is therefore recommended that this action be dismissed without prejudice based
5 on plaintiff's failure to file a second amended complaint in compliance with the court's July
6 25, 2018 order.

7 The parties are advised:

8 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
9 Practice, the parties may file specific written objections to this Report and
10 Recommendation within fourteen days of receipt. These objections should be entitled
11 "Objections to Magistrate Judge's Report and Recommendation" and should be
12 accompanied by points and authorities for consideration by the District Court.

13 2. This Report and Recommendation is not an appealable order and any notice
14 of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the District
15 Court's judgment.

16 **RECOMMENDATION**

17 IT IS THEREFORE RECOMMENDED that the Court enter an order **DISMISSING**
18 this action **without prejudice** based on plaintiff's failure to file a second amended
19 complaint; and

20 IT IS FURTHER RECOMMENDED that judgment be entered accordingly.

21 DATED: May 1, 2019.

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24 UNITED STATES MAGISTRATE JUDGE
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